A.F.R.

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH: **HON'BLE SHRI K.H.N. KURANGA, CJ**
& HON'BLE SHRI L.C. BHADOO, J

DEATH REFERENCE NO.02 OF 2003

AND

Criminal Appeal No.1326 of 2003

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. BHADOO
Judge
18/03/2004

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice
23rd/03/2004

Post for pronouncement of Judgment: 23rd March 2004

Sd/-
L.C. BHADOO
Judge
22nd/03/2004

(157)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR (C.G.)

DIVISION BENCH*: **HON'BLE SHRI K.H.N. KURANGA, CJ**
& HON'BLE SHRI L.C. BHADOO, J

DEATH REFERENCE NO.02 OF 2003

(Made by the Second Additional Sessions Judge, Ambikapur under Section 366 of the Code of Criminal Procedure)

State of Chhattisgarh
Through: Station House Officer,
Police Station, Lakhanpur,
District: Surguja (C.G.)

Versus

Dayaram Paikra (Kanwar)
Son of Hiran Ram,
Aged about 40 years, Occupation Cultivator and Labourer,
Resident of Own House in village Salka,
Police Station Lakhanpur, District Surguja (C.G.)

Present: Mr. J.D. Bajpai, Govt. Advocate, for the State.
Mr. Suryakant Mishra, Advocate for the accused.

Criminal Appeal No.1326 of 2003

Dayaram Paikra (Kanwar)
Son of Hiran Ram,
Aged about 40 years, Occupation Cultivator and Labourer,
Resident of Own House in village Salka,
Police Station Lakhanpur, District Surguja (C.G.)

Versus

State of Chhattisgarh
Through: Station House Officer,
Police Station, Lakhanpur,
District: Surguja (C.G.)

Present: Mr. Suryakant Mishra, Advocate for the appellant.
Mr. J.D. Bajpai, Govt. Advocate, for the State.

J U D G M E N T
(Delivered on of March, 2004)

The following Judgment of the Court was delivered by

L.C. Bhadoo, J. -

Accused Daya Ram Paikra (Kanwar) was tried by the Second Additional Sessions Judge, Ambikapur District Surguja in Sessions Trial No.151 of 2001 for the commission of the offences punishable under Sections 302 and 307 of the Indian Penal Code for committing the murder of his wife Muniya Bai and attempting to commit the murder of his another wife Naiharo Bai. The learned Second Additional Sessions Judge by his judgment dated 07/11/2003 after holding the accused guilty of the offences under Sections 302 and 307 of the Indian Penal Code convicted him accordingly and sentenced him to death for the offence under Section 302 of the Indian Penal Code and for the offence under Section 307 of the Indian Penal Code sentenced him to undergo imprisonment for life and to pay a fine of Rs.100/-, in default of payment of fine to further undergo rigorous imprisonment for one month.

(2) Criminal Appeal No.1326 of 2003 has been filed by accused/appellant Daya Ram Paikra (Kanwar) against the said conviction and sentences passed against him by the Second Additional Sessions Judge, Ambikapur in Sessions Trial No.151 of 2001. The learned Second Additional Sessions Judge has made Reference No.02 of 2003 to this Court under Section 366 of the Code of Criminal Procedure for confirmation of death sentence imposed by him on the accused.

(3) This judgment shall dispose of the aforesaid appeal filed by the accused and the reference made by the learned Second Additional Sessions Judge, Ambikapur.

(4) The prosecution case in brief is as follows: On 22/03/2001 at about 10.30 a.m. one Kango Kanwar went to the house of accused Dayaram for chewing tobacco. At that time, accused Dayaram was taking his meal in his house. His two wives namely Naiharo Bai and Muniya Bai were also present there. On demand by Kango Kanwar, accused Dayaram gave tobacco to him. At that time the accused was quarrelling with both the wives saying that they were not able to conceive, therefore, they should go away. It has also come on record that prior to the marriage of these two wives, accused Dayaram had married twice. Naiharo was the third wife and Muniya Bai was the fourth wife. As they could not conceive, the accused used to quarrel with them. After taking tobacco when Kango Kanwar was going towards the Basti and by the time he reached near the house of Gendi Bai,

Naiharo, the wife of the accused, came there running saying "save save" he would kill me. Kango Kanwar saw that the accused was chasing Naiharo holding a Tangi in his hand. On seeing this, Kango Kanwar asked accused Dayaram as to what he was doing? At that very moment Dayaram assaulted Naiharo on her neck and back from the sharp edged side of the Tangi. As a result of assault the blood started oozing out of the injuries sustained by Naiharo Bai and she fell down on the ground. Kango Kanwar was able to intervene and snatched the Tangi, weapon of offence, from the accused. Somehow Injured Naiharo Bai managed to enter the house of Gendi Bai in a staggering condition. Kameshwar and Tapeshwar were working near the scene of occurrence at the house of Gendi Bai and they also saw the incident. In a fit of anger the accused lifted a spade, which was lying at the site of the house of Gendi Bai and started chasing Kango Kanwar for assaulting him. However, Kango Kanwar ran away from the scene of occurrence and he directly went to the house of the Sarpanch of the village (wife of Ramnarayan) along with the Tangi which he snatched from the accused and handed over the same to the Sarpanch. The accused was very furious, he went to his house and brought another Tangi and started searching for his younger wife Muniya Bai saying he would cut her also. Muniya Bai also started running to save her life and she was shouting "save save" and went towards the house of Sukh Sai. As the door of the house of Sukh Sai was closed, Muniya Bai went towards the Badi (small garden) of Sukh Sai. But unfortunately the door of that side was also closed. By that time accused Dayaram reached the Badi holding Tangi in his hand and gave a severe blow on the neck of Muniya Bai which severed the head of Muniya Bai from the body. Seeing this furious condition of the accused no person from the locality came forward to stop him. The accused after committing the murder of his younger wife Muniya Bai started roaming in the Basti holding the Tangi in his hand and when the people gathered the accused ran away with the Tangi. Thereafter Kango Kanwar and husband of the Sarpanch namely Ramnarayan and others went to Lakhanpur Police Station which was at a distance of 22 kilometers from the place of incident and lodged Merg intimation (Ex.P/7) at about 1.10 p.m. On the basis of this report, the Police registered a case (Ex.P/6) and proceeded towards the spot. The Police sent Naiharo Bai to village Salka and then to Lakhanpur Hospital where the doctor examined her. Dr. Vedram Singh (PW-1) examined injured Naiharo Bai. He after preparing the report (Ex.P/1) and looking to the condition of Naiharo

referred her to the District Hospital Ambikapur where she was examined by Dr. A.K. Bansal (PW-2) and prepared the Bed Head Ticket Ex.P/2. He also noticed the injuries on the body of Naiharo Bai, which were mentioned in Ex.P/2. Dr. A.R. Jayant (PW-3) examined the injuries of Naiharo Bai on the request of Lakhanpur Police Station and after examination he prepared the injury report Ex.P/4. Injured Naiharo Bai received the treatment in the District Hospital Ambikapur and remained in the hospital for about a month. The Police after giving notice (Ex.P/8) to the Panchas prepared the Panchanama (Ex.P/9) of the dead body of Muniya Bai. The Patwari prepared the site plan (Ex.P/10) of the place of occurrence. The dead body of Muniya Bai was sent for post mortem examination to the Community Health Centre Udaypur. Dr. Aashutosh Tiwari (PW-20), Medical Officer, conducted the autopsy of the dead body of Muniya Bai on 23/03/2001 and prepared the post mortem report Ex.P/35. On a query made by Lakhanpur Police Station vide Ex.P/27 on 04/04/2001, Dr. Aashutosh Tiwari examined the Tangi, weapon of offence, and prepared the report Ex.P/36. In the report he stated that the injuries sustained by Muniya Bai could be caused with the said Tangi and his report is Ex.P/36. The Tangi which was left by Kango Kanwar at the house of Sarpanch, was handed over to the Police by the husband of Sarpanch namely Ramnarayan and the Police seized the same vide seizure memo Ex.P/13. The dead body of Muniya Bai was handed over to Hiranram under Ex.P/12. Under Ex.P/14 the Police seized the other blood stained Tangi, which was used as the weapon of offence for committing the murder of Muniya Bai on being produced by the accused. One blood stained Sando Baniyan of the accused was also seized under Ex.P/14. The Police also seized the blood stained soil and the plain soil from the place where Naiharo Bai was assaulted, under Ex.P/15. The blood stained soil and the plain soil were also seized from the place where the dead body of Muniya Bai was lying, under Ex.P/16. One blouse of Naiharo Bai was also seized under Ex.P/17. The Police prepared the site plan (Ex.P/28) of the place of occurrence. The accused was arrested on 23/03/2001 at about 6.00 p.m. under Ex.P/29. The blood stained articles and the other articles seized by the Police during the investigation were sent by the Superintendent of Police, Surguja to the Director, Forensic Science Laboratory, Sagar under Ex.P/32 and the report (Ex.P/34) of the FSL was received with a forwarding letter Ex.P/33.

(5) After completion of the investigation charge sheet was filed for the offences punishable under Sections 302 and 307 of the Indian Penal Code against the condemned prisoner in the Court of Chief Judicial Magistrate, Ambikapur on 03/05/2001, who in turn committed the case to the Court of Sessions Judge, Ambikapur from, where the learned Second Additional Sessions Judge, Ambikapur, received the case on transfer on 22/01/2002.

(6) The learned Second Additional Sessions Judge after hearing the arguments on charges and perusal of the records reached the conclusion that there was sufficient material to frame charges under Sections 302 and 307 of the Indian Penal Code. Accordingly he framed the charges against the accused for the commission of the offences under Sections 302 and 307 of the Indian Penal Code. The accused denied the charges and claimed to be tried.

(7) The prosecution in order to prove the charges levelled against the accused examined in all twenty witnesses at the trial. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he has denied the evidence of the prosecution witnesses and stated that he did not know anything. Ultimately he has stated that the witnesses of the prosecution have deposed against him on account of animosity. He further stated that he had no issue from the two wives. He did not know as to whether Muniya Bai had died and he had no information about the receiving of injuries by Naiharo Bai. Ramnarayan, Tapeshwar and Kameshwar are his relatives and they were in inimical term with him on account of some agricultural land.

(8) The learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and the counsel for the accused and after believing the evidence adduced by the prosecution, convicted and sentenced the condemned prisoner as aforesaid.

(9) We have heard Mr. Suryakant Mishra, learned counsel for the accused and Mr. J.D. Bajpai, Govt. Advocate, for the State.

(10) As far as the nature of death of Muniya Bai being homicidal is concerned, it is not in dispute. Dr. Aashutosh Tiwari (PW-20) in his evidence

has stated that he was posted as Medical Officer in the Community Health Centre Udaypur. On 23/03/2001 he received the requisition from Lakhanpur Police Station for conducting the post mortem on the dead body of Muniya Bai and on the request of the Police he conducted the autopsy on the dead body of Muniya Bai. He saw that the head of deceased Muniya Bai was severed from the body from the neck. There were marks of the injuries on the neck of the deceased by sharp edged weapon. Transverse incised injury measuring 6 cm x 1 cm was present on the face below the left ear which was caused by a sharp edged weapon. The injury was deep up to the bone of face and blood clot was present. The injuries were ante mortem in nature and were caused by sharp edged weapon. There was cut injury on the windpipe caused by sharp edged weapon. There were cut injuries on the face and on the food pipe by sharp edged weapon. Digested food was present in the small intestine. From the opinion of the doctor the cause of death was syncope and shock as a result of excessive bleeding and on account of these injuries the instantaneous death of the deceased took place and the death was homicidal in nature. The post mortem report is Ex.P/35. In view of the above evidence of the doctor, it stands proved that the nature of the death of Muniya Bai was homicidal.

(11) As mentioned above, the condemned prisoner has been convicted for the commission of the offences under Sections 307 and 302 of the Indian Penal Code. He has been convicted for the commission of the offence under Section 307 of the Indian Penal Code for assaulting Naiharo Bai, his elder wife, with the Tangi with the intention to commit her murder. The motive behind the commission of the alleged offence by the condemned prisoner, as per the prosecution case, was that his third wife namely injured Naiharo Bai and fourth wife Muniya Bai were not able to conceive. The earlier two wives of the condemned prisoner were also not able to conceive, therefore, he married the third woman namely Naiharo Bai and as even Naiharo Bai was not able to conceive then the condemned prisoner married the fourth woman, Muniya Bai (since deceased). But deceased Muniya Bai was also not able to conceive. Due to this reason the condemned prisoner was frustrated and on the fateful day when Kango Kanwar went to the house of the condemned prisoner at about 10.30 a.m. for chewing tobacco, he was taking his meal and at that time he was quarrelling with his wives Naiharo Bai and Muniya Bai saying that since they were not able to conceive, they should

go away. After taking tobacco Kango Kanwar left the house of the condemned prisoner Dayaram. Within a short while he saw Naiharo Bai coming running towards the house of Gendi Bai saying "save save" and the condemned prisoner was chasing her holding a Tangi in his hand. Seeing this, PW-4 Kango Kanwar warned the condemned prisoner and asked him as to what he was doing. But, unfortunately the condemned prisoner assaulted Naiharo Bai with the Tangi with its sharp edged side. As a result of the assault, Naiharo Bai received serious injuries on her head, back and right cheek and she started profusely bleeding from the injuries and fell on the ground. In the meantime, PW-4 Kango Kanwar snatched the Tangi from the hands of the condemned prisoner Dayaram. Naiharo Bai somehow managed to enter the nearby house of Sukho Bai and took shelter there. When Kango Kanwar snatched the Tangi from the hands of the condemned prisoner, that enraged him and in a fit of anger he picked up a spade which was lying at the site of the house of Gendi Bai and tried to assault Kango Kanwar with that spade. Seeing this, Kango Kanwar ran away from the scene of occurrence, reached the house of the village Sarpanch, wife of Ramnarayan, and handed over the blood stained Tangi to the Sarpanch. Thereafter, as per the prosecution case, Kango Kanwar, Ramnarayan and another person went to Lakhanpur Police Station and lodged the report Ex.P/7). Kango Kanwar (PW-4), Tapeshwar Kanwar (PW-5), injured Naiharo Bai (PW-7) and Kameshwar Kanwar (PW-13) are the eye witnesses to the incident. All these witnesses turned hostile and not supported the case of the prosecution. As far as injured Naiharo Bai (PW-7) is concerned, she totally turned hostile and even she refused to say that she was admitted to the hospital for taking treatment and regarding the injuries she has stated that the condemned prisoner had not assaulted her.

(12) Kango Kanwar (PW-4) also turned hostile. But in the examination-in-chief in para 4 he has stated that he knew Naiharo Bai and Muniya Bai. On the fateful day when he was going from the house of the condemned prisoner, he saw Naiharo Bai running and the condemned prisoner was chasing her holding the Tangi in his hand. He snatched that Tangi. This happened near the house of Gendi Bai. Naiharo Bai also ran away from that place. In para 5 of his evidence he has further stated that the accused assaulted Naiharo Bai with the Tangi. Therefore, he snatched the Tangi from the hand of the accused. On account of the assault by the

accused with the Tangi on Naiharo Bai, she received the injuries on her head and blood started oozing out of the injury and she fell down. Thereafter Naiharo Bai ran away and the accused also ran away. Thereafter what happened he did not know. He has admitted his signature on the Merg intimation (Ex.P/7), Panchanama (Ex.P/9) and the Map (Ex.P/10) prepared by the Patwari. He has simply stated that he did not go to the Police Station and the Police obtained his signatures at the site. In para 19 of his evidence, he has stated that it is true that the condemned prisoner had no issue and he married four women. Muniya Bai (since deceased) was the youngest wife and Naiharo Bai was the eldest wife of the condemned prisoner. He has further stated that he did not know why the condemned prisoner had assaulted Naiharo Bai. The accused assaulted Naiharo Bai once. In para 20 of his evidence, Kango Kanwar (PW-4) has stated that when the condemned prisoner was assaulting Naiharo Bai, Tapeshwar and Kameshwar were standing there and after snatching the Tangi from the hands of the condemned prisoner, when the condemned prisoner lifted the spade from the site and started coming towards him he also ran away. The dead body of Muniya Bai was lying at a distance of fifty yards from the place where Naiharo Bai was assaulted.

(13) Tapeshwar (PW-5) also turned hostile. He has stated that the condemned prisoner was chasing Naiharo Bai holding the Tangi in his hand and Kango Kanwar intervened. Naiharo Bai had received injury on the right side of her face. Naiharo Bai had sustained cut injury and the blood was oozing out of that injury. Kango Kanwar snatched the Tangi from the condemned prisoner and left that Tangi in the house of the Sarpanch of the village. Naiharo Bai also ran away from the place. He further stated that the dead body of Muniya Bai was lying near his house. But he does not know what happened to Muniya Bai and how she died. The Police came to the spot for investigation. In para 6 of his evidence he has stated that Kango Kanwar snatched the Tangi from Dayaram, the accused. Had Kango Kanwar not intervened and not snatched the Tangi from accused Dayaram, Naiharo Bai would also have met with the same fate as that of Muniya Bai. It is true that before snatching the Tangi by the Kango Kanwar, the condemned prisoner Dayaram assaulted Naiharo Bai with the sharp edged side of the Tangi on her back and neck. It is true that Naiharo Bai ran away from the scene. In para 8 of his evidence, he has stated that it is true that his brother

Kameshwar was also standing there. In para 12 he has stated that Naiharo Bai received the injury on her head and the blood was oozing out of the injury. Kango Kanwar snatched the Tangi from the condemned prisoner after he assaulted Naiharo Bai with the Tangi.

(14) Even though Kameshwar Kanwar (PW-13) has turned hostile, he has corroborated the evidence of PW-4 Kango Kanwar and PW-5 Tapeshwar Kanwar. He has stated that the condemned prisoner assaulted Naiharo Bai on her head with the Tangi and the blood was oozing out of the injury. Kango Kanwar snatched the Tangi from the hands of the condemned prisoner. He did not know what happened to Muniya Bai and who assaulted her and how she died. He does not know whether the condemned prisoner was searching for Muniya Bai.

(15) Sukho Bai Kanwar (PW-11) has also stated that on the fateful day at about 10.00 a.m. she heard the scream of Naiharo Bai saying "save save", therefore, she saved Naiharo Bai. There was injury on her head, which was caused by Tangi, and blood was oozing out of that injury. She took Naiharo Bai in the room of her house. She had not enquired from Naiharo Bai as to who assaulted her.

(16) Therefore, in view of the above evidence of the eye witnesses namely Kango Kanwar (PW-4), Tapeshwar Kanwar (PW-5) and Kameshwar Kanwar (PW-13), it is established that the condemned prisoner assaulted his wife Naiharo Bai with the Tangi, as a result of which she received the injuries on her head, back and neck. This fact stands corroborated by the evidence of Sukho Bai (PW-11) in whose house Naiharo Bai took shelter and who saw her in an injured condition and the blood was oozing out of the injuries. This fact further stands corroborated by the medical evidence. PW-1 Dr. Vedram Singh has stated that on 22/03/2001 on the requisition of Lakhanpur Police Station, he examined Naiharo Bai. She was profusely bleeding from the injuries and as her condition was bad, he immediately referred her to the District Hospital Ambikapur. His report is Ex.P/1. PW-2 Dr. A.K. Bansal has also stated that on 22/03/2001 he was posted as Assistant Surgeon in the District Hospital Ambikapur. On that day he admitted injured Naiharo Bai in the Hospital for treatment on the requisition of the Police. For giving her treatment he immediately called the Surgeon. He admitted Naiharo Bai at 3.25 p.m. in the hospital. After giving primary treatment to Naiharo Bai he

prepared the Bed Head Ticket (Ex.P/2) and he saw that there was incised wound on the right side of back in the size of 11 cm x 4 cm which was deep to the chest. There was incised wound on the right cheek in the 'L' shape in the size of 6 cm x 2 cm. There was another injury lower to the above injury in the size of 3.5 cm x 1.5 cm x bone deep. There was incised wound in the size of 4 cm x 1 cm x 1.5 cm on the left side of the neck. PW-3 Dr. A.R. Jayant has also corroborated the above evidence and he has stated that the injuries were present on the body of Naiharo Bai and he prepared the report, Ex.P/4. He has stated that on 18/04/2001 he examined the Tangi sent by the Police and he was of the opinion that the injuries, which were found on the body of Naiharo Bai, could be caused by the Tangi and his report is Ex.P/5. Therefore, the evidence of the above eye witnesses namely Kango Kanwar (PW-4), Tapeshwar Kanwar (PW-5), injured and Kameshwar Kanwar (PW-13) stands corroborated by the medical evidence.

(17) Learned counsel appearing for the condemned prisoner argued that as there is discrepancy in the evidence of PW-2 Dr. A.K. Bansal and PW-3 Dr. A.R. Jayant regarding the size of the injuries, their evidence cannot be believed. It is difficult to accept the contention of the learned counsel appearing for the condemned prisoner. Three doctors have examined Naiharo Bai. PW-2 Dr. A.K. Bansal has stated that he admitted Naiharo Bai and her Bed Head Ticket is Ex.P/2. This witness has not been cross-examined regarding the size of the injuries. He was the doctor who treated her. Therefore, it was not possible for him to actually measure the injury. PW-3 Dr. A.R. Jayant prepared the injury report and measured the injuries sustained by Naiharo Bai. Therefore, the discrepancy in the evidence of the doctors about the size of the injuries cannot make the prosecution case unreliable. However, the evidence of the eye witnesses namely Kango Kanwar (PW-4), Tapeshwar Kanwar (PW-5), injured and Kameshwar Kanwar (PW-13) and the evidence of Sukho Bai (PW-11) stand corroborated by the medical evidence. The Tangi, weapon of offence, was handed over by Kango Kanwar to Ramnarayan, husband of the Sarpanch of the village, at his house and the same was handed over by the Sarpanch to the Investigating Officer PW-18 Subhash Das who has stated that he seized the Tangi, weapon of offence, in question vide seizure memo Ex.P/13. It is true that as per the report (Ex.P/34) of the Forensic Science Laboratory, no blood was found on the Tangi. But even without the circumstantial evidence, the

commission of the offence of assaulting Naiharo Bai by the condemned prisoner Dayaram stands proved by the evidence of the eye witnesses and the medical evidence.

(18) Now coming to the question whether the above act of the condemned prisoner comes within the purview of the offence punishable under Section 307 of the Indian Penal Code. Section 307 of the Indian Penal Code lays down that "Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, and if hurt is caused to any person by such act, the offender shall be liable to imprisonment". In this connection Hon'ble the Apex Court in **R. Prakash Vs. State of Karnataka** reported in **2004 AIR SCW 815** has held thus:

> "It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Sections makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307, IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

Again In **Girija Shankar Vs. State of U.P.** reported in **2004 AIR SCW 810** same view was taken by Hon'ble the apex Court that in order to justify conviction under Section 307 it is not essential that bodily injury capable of causing death should have been inflicted.

(19) In the light of the above judgments of Hon'ble the Apex Court and considering the facts and circumstances of the present case, it appears that even though the doctors have not stated about the seriousness of the injuries sustained by Naiharo Bai, but it is an admitted fact that Naiharo Bai

was admitted to the Hospital for about a month. All the three injuries received by Naiharo Bai were on vital parts of the body. Moreover, as per the evidence of the eye witnesses namely Kango Kanwar (PW-4), Tapeshwar Kanwar (PW-5), and Kameshwar Kanwar (PW-13), the condemned prisoner was fed up because he had married four women and they were not able to conceive and on the fateful day the condemned prisoner was quarrelling with Naiharo Bai and Muniya Bai saying that since they were not able to conceive they should go away and thereafter he was chasing Naiharo Bai holding the Tangi in his hand. From the manner in which he assaulted Naiharo Bai with the sharp edged side of the Tangi on her head, neck and back, his intention can safely be inferred that he was assaulting Naiharo Bai with the intention to commit her murder. Had Kango Kanwar not intervened and snatched the Tangi from the condemned prisoner and in the meantime had Naiharo Bai not run away and entered the house of Sukho Bai the condemned prisoner with all probabilities would have murdered Naiharo Bai. PW-5 Tapeshwar Kanwar has categorically stated that had Kango Kanwar not snatched the Tangi from the condemned prisoner Naiharo Bai would have also met with the same fate as that of Bai. In order to bring the offence within the ambit of Section 307 of the Indian Penal Code as per the law laid down by the Hon'ble Supreme Court the main element, which has to be seen, is the intention or knowledge of the accused. If the intention or knowledge of the accused was to commit the murder of Naiharo Bai, then looking to the surrounding circumstances of the offence and the manner in which the offence was committed the accused can safely be held guilty of commission of the offence punishable under Section 307 of the Indian Penal Code. As has been mentioned above, the accused was determined to commit the murder of his two wives as they were not able to conceive and it was with that intention only that the condemned prisoner assaulted Naiharo Bai with the Tangi, that too with its sharp edged side on the vital parts of the body of injured Naiharo Bai. Injured Naiharo Bai was saved only because of the intervention of Kango Kanwar as he snatched the Tangi from the condemned prisoner and injured Naiharo Bai ran and entered nearby house of Sukho Bai and took shelter there. Therefore, we are of the opinion that the condemned prisoner has been rightly held guilty of the commission of the offence punishable under Section 307 of the Indian Penal Code for attempting to commit the murder of Naiharo Bai.

(20) On the question of involvement of the condemned prisoner in the murder of Muniya Bai, the prosecution has utterly failed to prove this part of the act of the condemned prisoner as all the eye witnesses had turned hostile. PW-4 Kango Kanwar has stated that he does not know how Muniya Bai died and who assaulted her. Similar is the evidence of PW-5 Tapeshwar and PW-13 Kameshwar and they also turned hostile. PW-15 Sunti Bai was the main witness. She also turned hostile. But she has stated that she knew Muniya Bai and Naiharo Bai and both were the wives of the condemned prisoner Dayaram. On the fateful day she went to the pond at about 11.00 a.m. for taking bath. After taking bath when she was returning and going towards the rear portion of the house in order to put the clothes for drying, she saw the dead body of Muniya Bai lying on the western side of the door of her house. The head was severed from the body and the body was lying in the pool of blood and nobody was present there. After seeing this, she was frightened and she left for her sister's-in-law house. She does not know anything as to who murdered Muniya Bai. Therefore, it can be said that all the prosecution witnesses have turned hostile and not supported the case of the prosecution and thus there is no ocular evidence in this case.

(21) As far the question of circumstantial evidence is concerned, in order to connect the accused with the commission of the offence based on circumstantial evidence, the Hon'ble Apex Court in the case of **Nesar Ahmed Vs. State Bihar** reported in **AIR 2001 Supreme Court 2416** has held that, in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused. It is on the basis of these principles that we shall examine the circumstantial evidence relied upon by the prosecution in this case.

(22) In the instant case, the only evidence against the condemned prisoner is recovery of the weapon of offence, the Tangi, and the Sando Baniyan of the condemned prisoner which were seized by the Police vide seizure memo Ex.P/14. The Baniyan and the Tangi were sent for examination to the Forensic Science Laboratory, Sagar. As per the report (Ex.P/34) of the Forensic Science Laboratory the blood was found on these

two articles. But there is no Serologist report to show that the blood found was human blood and the blood, which was found on these two articles, was of the same blood group of the deceased, and such Tangis are commonly found in every house in the village. Therefore, the condemned prisoner cannot be connected with the murder of Muniya Bai only on the basis of this circumstantial evidence namely, the recovery of the aforesaid articles. Virtually, there is no evidence to connect the condemned prisoner with the murder of his younger wife Muniya Bai. Therefore, the finding of the learned trial Court in convicting the condemned prisoner Dayaram for the commission of the murder of his wife Muniya Bai cannot be sustained as the same is based on no evidence.

(23) The trial Court has sentenced the condemned prisoner to undergo imprisonment for life and to pay a fine of Rs.100/- in default of payment of payment of fine to further undergo rigorous imprisonment for one month under Section 307 of the Indian Penal Code. Having regard to the facts and circumstances of the case and the manner in which and the reason for which the condemned prisoner assaulted Naiharo Bai, the act committed by him requires serious condemnation. He married four women one after another on the ground that no one was able to conceive. He never got himself examined about his fertility to produce a child and without getting himself subjected to "Fertility Test", for no reason, put blame on the shoulders of the helpless poor ladies. Out of four wives, he had already deserted two ladies and he assaulted Naiharo Bai. Even though the prosecution has not been able to prove that the condemned prisoner committed the murder of his fourth wife namely Muniya Bai on the same day after assaulting his third wife Naiharo Bai, as the eye witnesses turned hostile, the fact remains that Muniya Bai was found murdered on the same day or about the same time and her head was severed from the body.

(24) In view of the foregoing reasons, we are of the opinion that the condemned prisoner does not deserve any leniency and the life imprisonment imposed on him by the learned trial Court for the commission of offence under Section 307 of the Indian Penal Code is not in any way excessive. In the facts and circumstances of the case, we are of the opinion that the sentence of imprisonment imposed on the accused is proper and adequate.

(25) In the result, the appeal of the condemned prisoner Dayaram Paikra (Kanwar) partly succeeds. His conviction and sentence under Section 302 of the Indian Penal Code are set aside and he is acquitted of the said offence. However, we maintain the conviction and sentence imposed by the learned Second Additional Sessions Judge on the condemned prisoner for the commission of the offence under Section 307 of the Indian Penal Code.

(26) Thus, the appeal of the accused/appellant is partly allowed to the extent indicated above and the reference for confirmation of death sentence stands rejected.

Sd/-
Chief Justice
23 /03/2004

Sd/-
L.C. BHADOO
Judge
23/03/2004

Brajesh*